

² 5 U.S.C. § 8101 *et seq.*

disability or residuals causally related to his accepted December 1, 2006 employment injury; and (2) whether appellant met his burden of proof to establish continuing disability or residuals causally related to his accepted December 1, 2006 employment injury after November 22, 2019.

FACTUAL HISTORY

On December 8, 2006 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 1, 2006 he sustained a back injury when two dogs attacked him from behind and he twisted his back while in the performance of duty. He stopped work on the date of the claimed injury and returned to limited-duty work several months later.³ OWCP assigned OWCP File No. xxxxxx368 to the claim and accepted it for lumbar sprain and lumbago.⁴

Appellant received treatment for his December 1, 2006 employment-related back injury from several attending physicians, including Dr. David A. Bundens, a Board-certified orthopedic surgeon, and Dr. Laura E. Ross, an osteopath and Board-certified orthopedic surgeon. X-rays of appellant's lumbar spine from December 21, 2006 contained an impression of degenerative changes of the lumbar discs, predominately at L5-S1. On January 4 and 12, 2010 Dr. Bundens indicated that appellant was performing his regular duties on a full-time basis with some complaints of back discomfort. Appellant stopped work on June 19, 2010. In an October 14, 2013 report, Dr. Ross diagnosed lumbar herniation and radiculitis of the right leg.

OWCP engaged in extensive development of the medical evidence between 2013 and 2018, including referral to three OWCP referral physicians and two impartial medical specialists.⁵ In a June 29, 2018 report, Dr. Roy B. Friedenthal, a Board-certified orthopedic surgeon who served as the second of the two impartial medical specialists, reported the findings of his May 17, 2018 physical examination and determined that appellant did not have any work-related residuals or disability.⁶

³ OWCP paid appellant wage-loss compensation on the supplemental rolls for intermittent periods of disability from work commencing December 11, 2009.

⁴ Under a separate claim, assigned OWCP File No. xxxxxx201, OWCP previously accepted that appellant sustained a right wrist strain and right knee tenosynovitis when he pushed a plastic tub on September 29, 2000. Under another separate claim, assigned OWCP File No. xxxxxx165, it accepted that he sustained a lumbar sprain related to carrying telephone books on November 28, 2001. Appellant commenced working in a light-duty position on November 29, 2001 and returned to his regular duties on December 19, 2001. After a period of disability related to OWCP-authorized right wrist surgery performed on April 4, 2004 in connection with his claim under OWCP File No. xxxxxx201, he returned to his regular duties in June 2005.

⁵ Commencing March 8, 2015, OWCP placed appellant on the periodic rolls and paid him wage-loss compensation for total disability.

⁶ OWCP had determined that there was a conflict in the medical opinion evidence between Dr. Ross and Dr. Andrew Newman, a Board-certified orthopedic surgeon who served as an OWCP referral physician. In a June 1, 2017 report, Dr. Newman determined that appellant's December 1, 2006 employment injury had resolved. In a July 7, 2017 report, Dr. Ross opined that appellant continued to have residuals of the December 1, 2006 lumbar sprain and that he was totally disabled.

In a July 30, 2018 report, Dr. Ross indicated that appellant's current diagnosed conditions that were causally related to the December 1, 2006 employment injury included multilevel lumbar disc protrusions with herniations at L1-2 and L3-4 and disc bulges at multiple levels with annular tears at L1-2, L3-4, and L4-5. She indicated that objective findings of the injury still existed, including spasm in the lumbar spine. Dr. Ross advised that appellant was medically able to return to work with restrictions of lifting no more than 10 pounds, and working no more than eight hours at a time. She advised that appellant could sit for five hours in total, and stand for three hours altogether with breaks.

In a March 6, 2019 notice, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits as he no longer had residuals or disability causally related to his accepted December 1, 2006 employment injury. It informed appellant that the special weight of the medical opinion evidence rested with the report of Dr. Friedenthal, the impartial medical specialist. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed action.

Appellant submitted a March 25, 2019 report from Dr. Ross who noted that appellant still had bilateral spasms in his lumbar spine and indicated that his current work status was "out of work." In an April 4, 2019 report, Dr. Ross provided further discussion of her treatment of appellant's back condition. She diagnosed status post lumbar spine sprain and strain, multilevel lumbar disc protrusions with herniations at L1-2 and L3-4; disc bulges at multiple levels with annular tears at L1-2, L3-4, and L4-5; and right knee internal derangement with mild chondromalacia patella and joint effusion. Dr. Ross repeated her prior findings and noted, "[h]is specific work-related condition has not resolved." He indicated that appellant was medically able to return to work with restrictions of lifting no more than 10 pounds and working no more than 8 hours at a time. Appellant was able to sit for 45 to 60 minutes continuously, stand for approximately 30 minutes continuously, sit for five hours altogether, and stand for three hours altogether with breaks. Dr. Ross differed with Dr. Friedenthal's assessment that appellant merely sustained a lumbar strain, as this is not what was noted on his magnetic resonance imaging (MRI) scan of the lumbar spine. She disagreed with Dr. Friedenthal's assessment that the aggravation of appellant's condition ceased when he returned to full-duty work three or four months after December 1, 2006.

Appellant, through counsel, argued that Dr. Friedenthal's June 29, 2018 report did not contain adequate medical rationale in support of its conclusions and that all of the relevant medical documents were not provided to Dr. Friedenthal for review.

In early-September 2019, OWCP determined that it would not pursue action based on the Dr. Friedenthal's opinion, which had been based on a physical examination conducted on May 17, 2018.

OWCP then referred appellant, along with a statement of accepted facts (SOAF) and series of questions, for a second opinion examination and evaluation with Dr. Stanley Askin, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether appellant continued to have residuals of his accepted December 1, 2006 employment injury.

In a September 27, 2019 report, Dr. Askin discussed appellant's factual and medical history and reported the findings of his physical examination. He noted that appellant showed full range of motion of his elbows, forearms, wrists, fingers, and thumbs, and that muscle function of the trapezii, latissimus dorsi, pectoralis major, deltoids, triceps, wrist flexors, and wrist extensors was intact bilaterally. Appellant reported that, when he moved his right wrist, there was pain in the radial aspect of his forearm, but not over the wrist joint proper. Dr. Askin reported that the Finkelstein's test for de Quervain's tendinitis and testing for the intersection syndrome were negative for the respective conditions. He indicated that appellant reported pain in the radial aspect of his right forearm, but that this was "a subjective report without objective manifestation." Straight-leg raising was negative to 90 degrees while seated and appellant's low back muscles relaxed appropriately on alternate leg stance from which it is concluded that there was no present muscle spasm. Dr. Askin noted that appellant offered 80 degrees of forward flexion and 10 degrees of side-bending to each side, which was quite reasonable for a 62-year-old person. Examination of appellant's knees revealed full range of motion and normal ligamentous function. Dr. Askin opined that appellant ceased to have residuals of the accepted lumbar sprain and lumbago conditions sustained on December 1, 2006, noting that he had no objective findings other than the fact that he examined as a rather typical 62-year-old man. He indicated, "[appellant] does not have any concurrent nonwork-related disability, apart from the fact that when a person is 62 years of age he is not as physically capable as when he was 20 years of age, but that is a biologically imposed consequence of senescence." Dr. Askin advised that there was nothing identifiably objective that would preclude appellant's resumption of his employment activities.

By decision dated November 22, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, as he no longer had residuals or disability causally related to his accepted December 1, 2006 employment injury. It found that the weight of the medical evidence rested with the opinion of Dr. Askin.

On December 2, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a December 9, 2019 duty status report (Form CA-17) from Dr. Scott Fried, a Board-certified orthopedic surgeon, who diagnosed right wrist sprain/tenosynovitis and recommended work restrictions. In a December 9, 2019 work capacity evaluation report (Form OWCP-5c), he also recommended work restrictions. Appellant also submitted a functional capacity evaluation (FCE) report, signed by Dr. Fried on December 6, 2019, which showed that appellant could lift or carry up to 10 pounds.

During the hearing held on April 6, 2020, counsel argued that the weight of the medical opinion evidence rested with the opinion of Dr. Ross who found continuing employment-related residuals and disability.

By decision dated June 1, 2020, OWCP's hearing representative affirmed the November 22, 2019 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁷ After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁸ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁰ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits and medical benefits, effective November 22, 2019.

The weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Askin, the OWCP referral physician. The September 27, 2019 report of Dr. Askin establishes that appellant had no residuals or disability due to his accepted December 1, 2006 employment injury after November 23, 2019.

In his September 27, 2019 report, Dr. Askin discussed appellant's factual and medical history and reported the findings of his physical examination. He opined that appellant ceased to have residuals of the accepted lumbar sprain and lumbago conditions sustained on December 1, 2006, noting that he had no objective findings other than the fact that he examined as a rather typical 62-year-old man. Dr. Askin indicated, "[appellant] does not have any concurrent nonwork-related disability, apart from the fact that when a person is 62 years of age he is not as physically capable as when he was 20 years of age, but that is a biologically imposed consequence of senescence." He advised that there was nothing identifiably objective that would preclude appellant's resumption of his employment activities.

The Board has reviewed the opinion of Dr. Askin and finds that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of

⁷ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁸ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁹ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹⁰ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹¹ *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

continuing residuals/disability related to the December 1, 2006 employment injury. Dr. Askin provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He provided medical rationale for his opinion by explaining that appellant had no objective findings of the accepted lumbar sprain and lumbago.¹²

Appellant submitted a March 25, 2019 report from Dr. Ross who noted that appellant still had bilateral spasms in his lumbar spine and indicated that his current work status was “out of work.” In an April 4, 2019 report, Dr. Ross provided further discussion of her treatment of appellant’s back condition. She diagnosed status post lumbar spine sprain and strain, multilevel lumbar disc protrusions with herniations at L1-2 and L3-4; disc bulges at multiple levels with annular tears at L1-2, L3-4, and L4-5; and right knee internal derangement with mild chondromalacia patella and joint effusion. Dr. Ross indicated that appellant sustained these injuries due to the December 1, 2006 work-related incident and found that he still had findings including spasm in the lumbar spine. She recommended work restrictions and noted, “[h]is specific work-related condition has not resolved.”

The Board finds, however, that Dr. Ross’ reports are of limited probative value with respect to OWCP’s termination action because it has not been accepted that appellant sustained her above-detailed diagnosed conditions in connection with the December 1, 2006 employment injury. Dr. Ross has not otherwise explained, with medical rationale, how such injuries were sustained by appellant on December 1, 2006. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/level of disability has an employment-related cause.¹³ Therefore, these reports are insufficient to support appellant’s claim that OWCP improperly terminated compensation.

As the evidence of record is insufficient to overcome the weight accorded to Dr. Askin, the Board finds that OWCP has met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits.

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability after that date, causally related to the accepted employment injury.¹⁴ To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized

¹² See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician’s knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion).

¹³ See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁴ See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

medical evidence based on a complete medical and factual background, supporting such causal relationship.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals causally related to his accepted December 1, 2006 employment injury after November 22, 2019.

After OWCP's November 22, 2019 decision terminating appellant's compensation effective the same date, appellant submitted additional medical evidence, which he felt showed that he was entitled to compensation after November 22, 2019 due to residuals of his December 1, 2006 employment injury. Given that the Board has found that OWCP properly relied on the opinion of the OWCP referral physician, Dr. Askin, in terminating appellant's compensation effective November 22, 2019, the burden shifts to appellant to establish that he is entitled to compensation after that date.

Appellant submitted a December 9, 2019 duty status report from Dr. Fried who diagnosed right wrist sprain/tenosynovitis and recommended work restrictions. In a December 9, 2019 work capacity evaluation report, Dr. Fried also recommended work restrictions. Appellant also submitted an FCE report, signed by Dr. Fried on December 6, 2019, which showed that appellant could lift or carry up to 10 pounds. The Board has reviewed the additional evidence submitted by appellant and finds that it is not of sufficient probative value to establish that he had residuals/disability related to his December 1, 2006 employment injury after November 22, 2019. As noted above, it has not been accepted that appellant sustained a wrist injury on December 1, 2006 and none of these reports contains an opinion that appellant had residuals/disability due to the accepted lumbar sprain or lumbago conditions. The Board has held that medical evidence that does not offer an opinion regarding work-related residuals or disability is of no probative value on the issue of causal relationship.¹⁶

As appellant has not submitted any rationalized medical evidence establishing that he had employment-related disability or residuals after November 22, 2019, causally related to the accepted December 1, 2006 employment injury, he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits and medical benefits, effective November 22, 2019. The Board further

¹⁵ *Id.*

¹⁶ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

finds that appellant has not met his burden of proof to establish continuing disability or residuals causally related to his accepted December 1, 2006 employment injury after November 22, 2019.

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board